In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 571

WILLIAM DAVIS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals is reported at 411 F. 2d 927.

JURISDICTION

The judgment of the court of appeals was entered on June 6, 1969. A petition for rehearing was denied on July 17, 1969. Mr. Justice Marshall extended the time for filing a petition for a writ of certiorari to and including September 17, 1969, and on September 10, 1969, the petition was filed. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

365-028—69

QUESTION PRESENTED

Whether petitioner's conviction requires reversal because his accomplice, who was implicated in the crime at petitioner's trial, was subsequently acquitted at a separate trial by the same judge who had convicted petitioner.

STATEMENT

The petitioner and one Elvin Adams were jointly indicted in the United States District Court for the Eastern District of Wisconsin on a charge of violating 18 U.S.C. 2421, transporting a female in interstate commerce for immoral purposes. Petitioner was granted a severance and waived trial by jury. He was convicted and sentenced to two years' imprisonment. The court of appeals affirmed (Pet. App. 1).

The evidence showed that on June 24, 1966, petitioner and Adams met Miss Judith Ann Hein at a tavern in Milwaukee. After several drinks they went to another tavern several blocks away (Tr. 10). They then went to petitioner's car and petitioner told Miss Hein they were going to another bar (Tr. 12). She rode in the back seat with petitioner while Adams drove (Tr. 13). She realized only later that they were going to Chicago, Illinois, and testified that this was done against her will (Tr. 44–45).

Upon arriving in Chicago, they checked into the Pershing Hotel. That night both men had intercourse with her (Tr. 14–15). The next day petitioner took Miss Hein to the New Jackson Hotel and made arrangements for her to engage in acts of prostitution (Tr. 15–16). Petitioner picked her up early the next morning, and she gave the money she had earned to

him (Tr. 18). The next day petitioner registered Miss Hein at another hotel and made the arrangements for her (Tr. 19–20). Petitioner again picked her up afterwards and she turned the money over to him (Tr. 22–23). During this time Miss Hein was staying with Adams at the Pershing Hotel (Tr. 25–26).

After about five days, Adams and Miss Hein moved to another hotel and Adams accompanied her to the various hotels (Tr. 28). Altogether Miss Hein made about $200 or $250. She gave $50 or $100 to petitioner and the rest to Adams (Tr. 31).

On July 5, Miss Hein and Adams were married (Tr. 31–32) at petitioner's suggestion (Tr. 32). That night, after a quarrel with Adams, Miss Hein went to work at the Olympic Hotel. Petitioner called her and picked her up in his car. She gave him her earnings for the evening (Tr. 35). They went to petitioner's house where they engaged in sexual intercourse (Tr. 35–36).

The following day, petitioner took her to visit Adams, who was in jail following an altercation between Adams and Alnus Nicholas, Miss Hein's boyfriend (Tr. 67). That night petitioner made arrangements for Miss Hein to work in a new hotel (Tr. 37). The next day Miss Hein went to the hospital to visit Nicholas, who had been shot during the fight with Adams. Pursuant to his advice she took a Greyhound bus home to Milwaukee (Tr. 38–39). Before that, Miss Hein testified, she never tried to leave because she was too frightened (Tr. 39, 54–57).

Two hotel managers identified petitioner as having been in and around their hotels (Tr. 89, 107). The

manager of the Pershing Hotel identified petitioner as the Mr. James Cooper who had signed the register for Mr. and Mrs. Cooper. He testified that there was a woman with petitioner but he could not recognize her (Tr. 89–90). A registration card from the Roberts Motel with the name Mr. and Mrs. Davis was also introduced (Tr. 98, 111).

Petitioner took the stand and admitted meeting Miss Hein in Milwaukee and accompanying her to Chicago in his car. He denied any participation in or knowledge of her activities as a prostitute (Tr. 130–131). Adams substantiated petitioner's testimony.

ARGUMENT

Petitioner claims that his conviction must be reversed because his accomplice, Adams, was acquitted in a later trial for the same offense before the same judge. The crime charged, transporting a female across state lines for immoral purposes, does not involve conspiracy. One person alone may be found guilty of this offense. The accomplice's guilt could be determined only by the evidence at his separate trial. As the transcript of the second trial is not before the Court, there is no indication what the evidence was at that trial. Petitioner cannot take advantage of the fact that at the separate trial the evidence was not sufficient to convict his accomplice. Even if the evidence was the same, that would not prove that the verdict of acquittal, which the government could not appeal, was the correct one.

Indeed, what petitioner is really arguing is that there was insufficient evidence to support his guilt.

See *Coleman* v. *United States,* 295 F. 2d 555 (C.A.D.C.); *Magnolia Motor & Logging Co.* v. *United States,* 264 F. 2d 950 (C.A. 9); and *United States* v. *Hare,* 153 F. 2d 816 (C.A. 7), certiorari denied, 328 U.S. 836. The facts summarized in the Statement are ample to support guilt. While both petitioner and Adams denied substantial parts of Miss Hein's testimony, including any knowledge of her activities as a prostitute, the trial judge was in the best position to determine their credibility. According to Miss Hein's testimony at petitioner's trial, while both men were involved, petitioner had the more active role with respect to the crime charged. They had ridden in his car. He had registered and paid for the hotel room at the Pershing. Petitioner had taken her to various hotels and made the arrangements for her to engage in acts of prostitution. Whatever the subsequent arrangements with Adams, petitioner was the dominant person with respect to the transportation in interstate commerce for the purpose of prostitution.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari be denied.

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